

DONALD OLMSTED,

Plaintiff,

vs.

MICHAEL J. ASTRUE,¹
Commissioner of Social Security,

Defendant.


Plaintiff's complaint seeks judicial review of the Commissioner's decision denying plaintiff's application for disability insurance benefits under Title II of the Act, 42 U.S.C. §§ 401, et seq. Plaintiff's complaint also alleges that he was denied supplemental security income (SSI) benefits based on disability under Title XVI of the Act, 42 U.S.C. §§ 1381, et seq. , and the record contains an SSI application signed by the plaintiff on October 30, 2002. As noted by the Commissioner in his brief in support of the answer, the ALJ's decision does not address the SSI application. However, the Commissioner urges me to treat the

¹Michael J. Astrue became the Commissioner of Social Security on February 12, 2007. Pursuant to Rule 25(d)(1) of the Federal Rules of Civil Procedure, Astrue should be substituted for Commissioner Jo Anne B. Barnhart as Defendant in this suit. No further action need be taken to continue this suit by reason of the last sentence of section 205(g) of the Social Security Act, 42 U.S.C. § 405(g).

ALJ's decision as if it denies both applications for benefits on the ground that the same sequential evaluation process is used for both applications. While this may be the case, the Commissioner has cited no authority to support his position that I may review a denial of benefits unless the application was actually reviewed and denied. Based on this record, it appears that the Commissioner failed to consider one of plaintiff's applications for benefits. Plaintiff has not explained this discrepancy in his brief in support of the complaint or in any subsequent filings.

Accordingly,

IT IS HEREBY ORDERED that defendant shall show cause in writing by September 24, 2007 why this case should not be remanded to the Commissioner for a hearing on plaintiff's application for supplemental security income (SSI) benefits.



CATHERINE D. PERRY
UNITED STATES DISTRICT JUDGE

Dated this 7th day of September, 2007.